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From:

Sent: Tue 7/8/2008 4:15 PM

To:

Cc:

Subject: RE: NOL issue

To briefly answer these questions

1) Section 6514 deals with credit or refunds after the period of limitations has run. It is not relevant in determining whether the period of limitations has run, which is your issue here.

2) The "compute the net operating loss for any preceding or succeeding taxable year from which a net operating loss may be carried over or carried back to such taxable year." in Treas Reg. 1.172 -1(b)(1) is referring to the "2 taxable years preceding the taxable year of such loss" and the "20 taxable years following the taxable year of the loss" as described by IRC 172(b)(1)(A). Also the context of the phone conversation referred to was to your particular case, and at this time should not be extended beyond the case at hand.

3) The meaning of the term "credit" as used in 6511 is not as you describe. Again please follow the analysis in the PLR referred to as well as the analysis of the tax court in *Mennuto v. Commissioner*, 56 T.C. 910 (a 1972 tax court case permitting taxpayer a similar recalculation in the investment credit carryover area) along with *Hill v. Commissioner*, 95 T.C. 437 (1990) and *Calumet Indus., Inc. v. Commissioner*, 95 T.C. 257, 276-277 (1990) (pertaining to the Services ability to go back to a closed year to make a NOL redetermination for purposes of properly calculating the 172 deduction in an open year). The reasoning used by the tax court applies to your situation.

I can not follow the hypothetical examples you provided as they contain several errors in analysis. It is probably more beneficial to focus on the specific matter at hand. Again the key issue generally is that in this matter the year at issue is the year the section 172 deduction is being taken and not when the losses used to calculate that deduction occurred so long as its within the period permitted under section 172.

Please re-read the analysis in the PLR and tax court cases referred to above. These all stand for the conclusion that the taxpayer may recharacterize events that occurred in year closed under the statute of limitations-for purposes of redetermining net operating losses available for Taxpayer to carry over and deduct as net operating loss deductions in subsequent tax years. See also Issue 2 in 1997 IRS NSAR 5469 standing for the same.